IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTEENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 18889 of 2004

Between:

C. Thirupathaiah, S/o Nagaiah,
R/o Lingasanipally Village, Bijanapally Mandal,
Mahaboobnagar District.

..... PETITIONER

AND

1 The State of A.P. Rep. by its Principal Secretary,
Panchayat Raj & Rural Development, Secretariat, Hyderabad.
2 The Chief Executive Officer, Zilla Parishad, Mahaboobnagar,
Mahaboobnagar District.
3 K. Thgirupathaiah S/o. K. Veeraiah
Bijinepally Mandal, Mahabubnagar District.
(R3 is impleaded as per court order dt. 16-11-2004 in WPMP 26058 of 2004)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd Respondent in passing the Impugned Orders vide Proc.No. D1/1539/2004 dt. 7-10-2004 as arbitrary, illegal and violative of Article 14 and 21 of the Constitution of India and further set aside the above Impugned Proceedings as being contrary to the statutory provisions of A.P. Panchayat Raj Act, 1994

Counsel for the Petitioner : MR. HARENDER PRASAD

Counsel for the Respondents : GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITIOIN NO.18889 OF 2004

ORDER :

The petitioner seeks a declaration that the proceedings of the second respondent – The Chief Executive Officer, Zilla Parishad, Mahaboobnagar, dated 7-10-2004 as arbitrary and illegal and liable to be set aside being violative of the statutory provisions of the A.P. Panchayat Raj Act, 1994.

The facts, in brief, are as under:

The petitioner was elected as a Member of the Mandal Praja Parishad, Bijanapally Mandal in the year 2001 having contested as a candidate of Telugu Desam party. While so, it appears that the Mandal President of Congress Party made a complaint dated 3-7-2004 alleging that the petitioner incurred disqualification under Section 19(3) of A.P. Panchayt Raj Act on the ground that he gave birth to a third child. In pursuance thereof, the second respondent having called for a report from the Mandal Revenue Officer, Bijanapally Mandal with regard to the alleged disqualification,

issued a show-cause notice dated 9-8-2004 calling upon the petitioner to show-cause as to why he should not be removed from the Office of the Mandal Praja Parishad. The petitioner submitted a detailed representation dated 21-08-2004 explaining that the third child was born due to the failure of the Tubectomy Operation. Thereafter, the impugned proceedings dated 7-10-2004 were issued by the second respondent declaring that the petitioner has incurred disqualification with immediate effect under Section 19(3) read with Section 156 (2) of the A.P. Panchayat Raj Act, 1994 (for short, 'the Act') and he is not entitled to continue in the office of M.P.T.C. The said order is under challenge in this writ petition.

The second respondent filed a counter-affidavit stating that in response to the show-cause notice dated 9-8-2004 the petitioner submitted an explanation admitting the fact that he has given birth to the third child on 26-06-2003 and in view of the said clear admission the authorities have no option except to disqualify him under the provisions of the A.P. Panchayat Raj Act, 1994. It is also stated that the second respondent is competent to pass such an order under Section 156(2) of the Act and if there is any dispute the petitioner has to approach the District Court under Section 22 of the Act, but the petitioner failed to do so.

On the basis of the above pleadings, the only question that arises for consideration is whether the 2nd respondent has jurisdiction to hold that the petitioner had incurred disqualification under Section 19(3) and therefore he is not entitled to continue in the post of MPTC Member, Lingasanipally Village of Bijinepally Mandal of Mahaboobnagar District.

The learned Counsel for the petitioner contends that unless there is an adjudication by the District Court under Section 22 of the Act as regards the alleged disqualification, the 2nd respondent has no authority or jurisdiction to issue the impugned proceedings.

On the other hand, the learned Counsel appearing for the 2nd respondent while placing reliance upon the decision of a learned Single Judge in

W.P.No.17871 of 2003, dated 19-08-2003 in CHINTHALA VENAKTESWARLU v. DISTRICT PANCHAYAT OFFICER, GUNTUR vehemently contended that in case the petitioner disputes the allegation as regards the disqualification suffered by him, he ought to have worked out the remedy available under Section 22 of the Act and he is not entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution of India and therefore the writ petition is liable to be dismissed in limine.

At the outset, it is to be noted that the decision of the learned Single Judge, on which the learned Counsel for the respondents relied upon, has been reversed by the Division Bench in W.A.Nos.1537 & 1790 of 2003, dated 21-11-2003 in CHAVA ROSAIAH v. CHINTALA VENKATESWARLU AND ANOTHER. Having considered the scope of Sections 19 and 22 of the A.P. Panchayat Raj Act, in detail, the Division Bench held as under :

> *"… … on literal interpretation, it must be held that Section 22 being only an enabling provision conferring right on such member or Sarpanch who receives an intimation of allegations of his not being qualified or having become disqualified that within two months he can approach the District Court for a decision. It is only on decision being rendered by the District Court holding that a member or Sarpanch is not qualified or has become disqualified then consequential action can be taken. Section 20 operates automatically that a person or member subject to any disqualification specified in Section 19 and subject to Section 22 such member or Sarpanch shall cease to hold office. Opening words of Section 20 "subject to the provisions of Section 22 a member shall cease to hold Office" would rather support the view which we are taking that the disqualifications as specified in Section 19 would operate as a bar against a member or Sarpanch to hold the Office only when there is a decision rendered by District Court as envisaged in Section 22 and not otherwise."*

The said case arises out of an alleged disqualification under Section 19 (2) (i) read with Section 14 of the Act and the petitioner therein was a Sarpanch of the Gram Panchayat. In the case on hand, the alleged disqualification is under Section 19(3) of the Act and it is not in dispute that by virtue of Section 156(2) of the Act the provisions of Sections 19, 20 & 22 shall also apply to a Member of the Mandal Parishad. Thus, the ratio laid down by the Division Bench in CHAVA ROSAIAH'S CASE (2 supra) squarely applies to the case on hand. Hence, the contentions of the

learned Counsel for the respondents are without any substance and cannot be accepted.

In the case on hand, it is true that the petitioner did not seek any decision under Section 22 of the Act, however, admittedly even the 2nd respondent did not seek decision from the District Judge on the allegation against the petitioner. In the absence of such adjudication under Section 22 of the Act, as held by the Division Bench no action can be taken on the basis of the alleged disqualification. In the circumstances, I am of the view that the second respondent ought not to have issued the impugned proceedings holding that the petitioner incurred disqualification under Section 19(3) and he is not entitled to continue as a Member of M.P.T.C. The impugned proceedings thus being void and without jurisdiction, cannot be sustained and the same are accordingly set aside.

Accordingly, the Writ Petition is allowed. No costs.

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17th January, 2005.

gbs

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this 17th day of January, Two thousand and five.

To

1 The Principal Secretary, State of A.P.,
Panchayat Raj & Rural Development, Secretariat, Hyderabad.
2 The Chief Executive Officer, Zilla Parishad, Mahaboobnagar,
Mahaboobnagar District.

3.2CCs to G.P. for Panchayat Raj & Rural Development, High Court of AP Blgs, Hyderabad.

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